IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1441 OF 2006

1. Santosh Hariba Yadav
and anr. ....Applicants.

v/s

The State of Maharashtra ....Respondent.

Mr. R.R. Bhonsale for the applicants.
Ms. M.H. Mahatre, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 17th April, 2006

P.C.:

1. Heard the learned Counsel for the applicants and the learned APP for the State.

2. The applicants were arrested in connection with C.R. No.145 of 2005 registered at Bhuinj Police Station for the offence punishable under sections 302, 404 read with section 34 of the Indian Penal Code.

3. It is alleged that the applicants had assaulted the deceased who later on succumbed to the injuries.

4. The learned Counsel appearing on behalf of the applicants has submitted that the applicants had gone to the house of the deceased and, thereafter, when the

deceased fell down on the road, they took him to the hospital where he died.

5. In the present case, the entire prosecution case rests on the circumstantial evidence. Some of the witnesses have seen the applicants in the company of the deceased. There is no recovery at the instance of the present applicants. The charge-sheet has been filed. It is alleged by the prosecution that the motive for committing the said offence was that there was a dispute between the applicants and the deceased over the payment of the hotel bill.

6. In my view, the material on record is not sufficient to indicate that the applicants had committed the said offence. Even the evidence on which the reliance is placed by the prosecution is a weak type of evidence. The theory of last seen together also does not hold water since the applicants themselves had taken the deceased to the hospital. In these circumstances, this is a fit case for grant of bail.

7. The applicants be released on bail in the sum of Rs 5000/- each with one or two sureties in the like amount each. The applicants shall report to the

concerned Police Station once in a week. The applicants shall not tamper with the evidence or threaten any of the witnesses.

8. It is made clear that the trial court shall not be influenced by any observations made by this Court in this order and the same should not be construed to mean as an expression of opinion on the merits of the case and decide the case on its own merits and in accordance with law.

9. Application is accordingly disposed of.

V.M. KANADE, J.